

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, THE
EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO, AND THE PUERTO RICO PUBLIC
BUILDINGS AUTHORITY,

Debtors.¹

PROMESA

Title III
No. 17 BK 3283-LTS

(Jointly Administered)

**INFORMATIVE MOTION OF FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD REGARDING TAX-EXEMPT STATUS OF NEW GO BONDS TO BE
ISSUED PURSUANT TO THE MODIFIED EIGHTH AMENDED TITLE III JOINT
PLAN OF ADJUSTMENT OF THE COMMONWEALTH OF PUERTO RICO, ET AL.**

To the Honorable United States District Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”), the Puerto Rico Public Buildings Authority (“PBA”), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

and PBA, the “Debtors”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² files this Informative Motion to inform the Court of the tax-exempt status of the New GO Bonds to be issued pursuant to *Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.*, dated January 14, 2021 [Case No. 17-03283, ECF No. 19784] (the “Plan”),³ and states as follows:

1. On July 12, 2021, the Oversight Board, on behalf of itself and the Commonwealth, ERS and PBA, entered into that certain Amended and Restated Plan Support Agreement (the “GO/PBA PSA”) with the A&R PSA Creditors, as defined in the GO/PBA PSA. Sections 4.1(e) and 4.2(d) of the GO/PBA PSA provide that each of the Oversight Board and the Commonwealth, respectively, shall “. . . us[e] its reasonable best efforts to cause the New GO Bonds and the CVIs to be tax-exempt to the extent permitted by law”

2. Section 4.10(c) of the GO/PBA PSA, entitled, “Tax-Exempt Treatment of the Bonds,” and Section 74.3 of the Plan, entitled, “Tax-Exempt Treatment of the New GO Bonds,” provide in pertinent part as follows:

. . . in the event that the Government Parties obtain a determination from the IRS or an opinion from Section 103 Bond Counsel (collectively, a “Favorable Determination”) that the ratio of aggregate amount of all taxable New GO Bonds to be issued on the Effective Date (the “New Ratio”) to the total aggregate amount of all New GO Bonds is less than thirteen percent (13%) (the “Existing Ratio”), (i) in the event that the Favorable Determination is obtained on or prior to the Effective Date, the holders of any Claims receiving New GO Bonds pursuant to the Plan shall receive the benefit of such Favorable Determination in the form of tax-exempt New GO Bonds issued pursuant to the Plan with coupons for all maturities equal to the coupons on the tax-exempt New GO Bonds set forth on Exhibit “I” hereto, and, to the extent that the Government Parties and the Initial GO/PBA PSA Creditors determine during the period up to and including the Effective Date to modify the coupons set forth on Exhibit “I” hereto, the amount of par New GO Bonds will either increase or decrease, on a dollar-for-dollar basis, depending upon the coupon

² PROMESA has been codified at 48 U.S.C. §§ 2101–2241.

³ Capitalized terms used herein that are not otherwise defined shall have the meanings given to them in the Plan.

structure, subject to the amount of the maximum annual debt service provided for in Exhibit “T” hereto, and any such modification being applied to creditors pro rata on a post-application of GO/PBA PSA Restriction Fee and GO/PBA Consummation Costs recovery basis as described in footnote 8 to Annex 2-A to Exhibit “T” of the GO/PBA Plan Support Agreement

3. In accordance with the provisions of Section 4.10(c) of the GO/PBA PSA, as amended pursuant to the Amendment to the Amended and Restated Plan Support Agreement, dated as of January 30, 2022, the obligations of the Oversight Board and the Commonwealth to use their respective reasonable best efforts to obtain tax-exempt status for the New GO Bonds and the CVIs expired on February 28, 2022.

4. On January 18, 2022, the Court entered the *Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority* [ECF No. 19813] (the “Confirmation Order”).

5. Following execution of the GO/PBA PSA, AAFAF, the Oversight Board and their respective advisors have had numerous discussions, consulted with outside experts and consultants, including representatives of the A&R PSA Creditors, and performed necessary due diligence with respect to obtaining tax-exempt status for the New GO Bonds and CVIs. Additionally, to the extent necessary, Commonwealth advisors met with representatives of the Internal Revenue Service (“IRS”), and subsequently sought a ruling from the IRS with respect to the issuance of the New GO Bonds. On February 1, 2022, the IRS rendered a determination with respect to the New GO Bonds that would “. . . assist the Commonwealth and Nixon Peabody LLP, as bond counsel, in making certain determinations that will maximize the amount of the New GO Bonds the interest on which (other than pre-issuance accrued interest), subject to customary qualifications, would be excluded from gross income for federal income tax purposes under

Section 103 of the Code.”⁴ Upon receipt thereof, and following completion of the due diligence required to reach a Favorable Determination, Nixon Peabody LLP, Section 103 Bond Counsel for AAFAF, one of the Government Parties, has determined that, subject to the receipt of customary tax certifications and closing documents, it expects to deliver on the Effective Date an opinion that, under existing law and assuming compliance with certain tax covenants, and the accuracy of certain representations and certifications made by the Commonwealth, interest on Series 2022A of the New GO Bonds (a) will be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “IRC”), and (b) is not treated as a preference item in calculating the alternative minimum tax imposed under the IRC. Accordingly, on March 1, 2022, the Commonwealth filed on the Electronic Municipal Market Access (“EMMA”) system a notice, a copy of which is annexed hereto as **Exhibit A**, regarding such Favorable Determination and a revised schedule for the New GO Bonds to be issued pursuant to the Plan, including, without limitation, the revised coupons and par amounts contemplated in accordance with the GO/PBA PSA and Section 74.3 of the Plan.

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⁴ Puerto Rico Fiscal Agency and Financial Advisory Authority, as Fiscal Agent for the Commonwealth and its instrumentalities, *Additional / Voluntary Event-Based Disclosure* (Feb. 8, 2022), available at <https://emma.msrb.org/P21547619-P21196105-P21615284.pdf>.

WHEREFORE, the Oversight Board respectfully requests that the Court take notice of the foregoing.

Dated: March 1, 2022
San Juan, Puerto Rico

Respectfully submitted,

/s/ Brian S. Rosen
Martin J. Bienenstock
Brian S. Rosen
(Admission *pro hac vice*)
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

*Attorneys for the Financial Oversight and
Management Board as representative for the
Debtors*

/s/ Hermann D. Bauer
Hermann D. Bauer
USDC No. 215205
O'NEILL & BORGES LLC
250 Muñoz Rivera Ave., Suite 800
San Juan, PR 00918-1813
Tel: (787) 764-8181
Fax: (787) 753-8944

*Co-Attorneys for the Financial Oversight and
Management Board as representative for the
Debtors*

Exhibit A

EMMA Filing



GOVERNMENT OF PUERTO RICO
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY

Municipal Secondary Market Disclosure Information Cover Sheet
Municipal Securities Rulemaking Board (MSRB)
Electronic Municipal Market Access System (EMMA)
Additional / Voluntary Event-Based Disclosure

THIS FILING RELATES TO ALL OR SEVERAL SECURITIES ISSUED BY THE ISSUER, OR ALL OR SEVERAL SECURITIES OF A SPECIFIC CREDITOR:

Issuer's Name: Commonwealth of Puerto Rico; Puerto Rico Public Buildings Authority; Employees Retirement System of the Government of the Commonwealth of Puerto Rico; and Puerto Rico Infrastructure Financing Authority.

Other Obligated Person's Name (if any): _____

Nine-digit CUSIP number(s): 745145, 74514L; 29216M; 745235, 74523Z; 745223AA5

TYPE OF INFORMATION PROVIDED:

- A. ☐ Amendment to Continuing Disclosure Undertaking
- B. ☐ Change in Obligated Person
- C. ☐ Notice to Investor Pursuant to Bond Documents
- D. ☐ Communication from the Internal Revenue Service
- E. ☐ Bid for Auction Rate and Other Securities
- F. ☐ Capital or Other Financing Plan
- G. ☐ Litigation / Enforcement Action
- H. ☐ Change of Tender Agent. Remarketing Agent or Other On-going Party
- I. ☐ Derivative or Other Similar Transaction
- J. ☒ Other Event-Based Disclosures: Notice regarding tax exemption of the Commonwealth of Puerto Rico General Obligation Restructured Bonds, Series 2022A

I represent that I am authorized by the issuer, obligor or its agent to distribute this information publicly.

/s/ Hecrian D. Martínez Martínez

Hecrian D. Martínez Martínez

Puerto Rico Fiscal Agency and Financial Advisory Authority,

as Fiscal Agent for the Commonwealth and its instrumentalities

Dated: March 1, 2022

Nixon Peabody LLP, as bond counsel (“Bond Counsel”) to the Commonwealth of Puerto Rico (the “Commonwealth”), has determined that, subject to the receipt of customary tax certifications and closing documents, it expects to deliver on the effective date (the “Effective Date”) upon issuance of the Commonwealth of Puerto Rico General Obligation Restructured Bonds, Series 2022A (the “Series 2022A Bonds”), an opinion that, under existing law and assuming compliance with certain tax covenants, and the accuracy of certain representations and certifications made by the Commonwealth and certain other public authorities of the Commonwealth, interest on the Series 2022A Bonds will be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”). Bond Counsel also expects to deliver an opinion on the Effective Date that interest on the Series 2022A Bonds is not treated as a preference item in calculating the alternative minimum tax imposed under the Code.

The Series 2022A Bonds listed below, if and when issued, will be issued as current interest bonds, in the principal amounts, subject to mandatory sinking fund redemption and bear interest at the rates per annum as set forth below:

Series 2022A Bonds – Current Interest Bonds					
	Term Principal	Mandatory Sinking Fund Amortization	Interest Amount	Total Debt Service	Interest Rate
7/1/2022		\$376,515,000	\$307,767,250	\$684,282,250	5.000%
7/1/2023	\$752,950,000	376,435,000	288,941,500	665,376,500	5.000%
7/1/2024		375,595,000	270,119,750	645,714,750	5.000%
7/1/2025	749,520,000	373,925,000	251,340,000	625,265,000	5.000%
7/1/2026		371,355,000	232,643,750	603,998,750	5.000%
7/1/2027	739,160,000	367,805,000	214,076,000	581,881,000	5.000%
7/1/2028		363,190,000	195,685,750	558,875,750	5.000%
7/1/2029	720,620,000	357,430,000	177,526,250	534,956,250	5.000%
7/1/2030		350,425,000	159,654,750	510,079,750	5.000%
7/1/2031	692,495,000	342,070,000	142,133,500	484,203,500	5.000%
7/1/2032		332,265,000	125,030,000	457,295,000	4.000%
7/1/2033	649,835,000	317,570,000	111,739,400	429,309,400	4.000%
7/1/2034		301,170,000	99,036,600	400,206,600	4.000%
7/1/2035	584,115,000	282,945,000	86,989,800	369,934,800	4.000%
7/1/2036		262,150,000	75,672,000	337,822,000	4.000%
7/1/2037	501,325,000	239,175,000	65,186,000	304,361,000	4.000%
7/1/2038		213,890,000	55,619,000	269,509,000	4.000%
7/1/2039		186,135,000	47,063,400	233,198,400	4.000%
7/1/2040		155,745,000	39,618,000	195,363,000	4.000%
7/1/2041	681,610,000	125,840,000	33,388,200	159,228,200	4.000%
7/1/2042		130,875,000	28,354,600	159,229,600	4.000%
7/1/2043		136,110,000	23,119,600	159,229,600	4.000%
7/1/2044		141,555,000	17,675,200	159,230,200	4.000%
7/1/2045		147,220,000	12,013,000	159,233,000	4.000%
7/1/2046	708,865,000	153,105,000	6,124,200	159,229,200	4.000%
Total	\$6,780,495,000	\$6,780,495,000	\$3,066,517,500	\$9,847,012,500	

In addition, the Series 2022A Bonds listed below, if and when issued, will be issued as capital appreciation bonds, maturing on the dates and subject to mandatory sinking fund redemption as set forth below:

Series 2022A Bonds – Capital Appreciation Bonds				
	Initial Accreted Value	Accreted Value at Redemption Date*	Maturity Value**	Interest Rate
7/1/2022	\$ 100,862,061.30	\$105,968,971.50	\$116,970,000.00	5.000%
7/1/2023	96,003,057.15	105,969,766.35	111,335,000.00	5.000%
7/1/2024 ^{††}	91,376,871.30	105,970,000.00	105,970,000.00	5.000%
7/1/2029	\$98,129,013.00	\$149,997,523.50	\$185,450,000.00	5.375%
7/1/2030	93,059,851.80	149,997,764.30	175,870,000.00	5.375%
7/1/2031	88,252,614.90	149,998,089.75	166,785,000.00	5.375%
7/1/2032	83,694,073.80	149,998,937.80	158,170,000.00	5.375%
7/1/2033 ^{††}	79,371,000.00	150,000,000.00	150,000,000.00	5.375%

* Equals the original principal amount, plus interest accreted to the stated redemption date.

** Equals the total Accreted Value that would be represented by the portion of the capital appreciation term bond being redeemed if it were held to maturity.

^{††} Stated Maturity.